

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT AND CONDITIONAL
USE PERMIT ISSUED BY
ISLAND COUNTY TO NICHOLS
BROTHERS BOAT BUILDERS, INC.,
AND APPROVED WITH CONDITIONS
BY STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

HOLMES HARBOR HOMEOWNERS
ASSOCIATION,

Appellant,

v.

NICHOLS BROTHERS BOAT
BUILDERS, INC., ISLAND COUNTY,
and STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 83-6

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter is the request for review of a shoreline substantial
development and conditional use permit granted by Island County to
Nichols Brothers Boat Builders, Inc. and approved with conditions by

1 the State of Washington, Department of Ecology. The evidentiary
2 hearing in this matter was conducted on August 24, 25 and 26, and
3 December 6, 7, 8 and 9, 1983.

4 William A. Harrison, Administrative Law Judge, presided in these
5 proceedings. The case was heard or the transcript and record read by
6 Board members, Gayle Rothrock (Chairman), Lawrence J. Faulk, Nancy R.
7 Burnett, Richard A. O'Neal and Rodney M. Kerslake.

8 Appellant Holmes Harbor Homeowners Association was represented by
9 its attorney J. Richard Aramburu. Respondent Nichols Brothers Boat
10 Builders, Inc., was represented by its attorney Richard U. Chapin.
11 Respondent Island County was represented by Allan R. Hancock, Deputy
12 Prosecuting Attorney. Respondent State of Washington, Department of
13 Ecology was represented by Wick Dufford, Assistant Attorney General.

14 Having considered the testimony, exhibits, briefs, argument of
15 counsel, and being fully advised, the Board makes these

16 FINDINGS OF FACT

17 I

18 This matter arises on Whidbey Island at the foot of Holmes
19 Harbor. Historically, there has been a country store, a small machine
20 shop and a small saw mill located on or near the site in question. In
21 1964, Mr. Frank Nichols started his boat building works on the site.
22 In 1972, the business was transferred to his five sons who organized
23 as Nichols Brothers Boat Builders, Inc. (Nichols), the
24 respondent-permittee here.

II

The first boat launched from the Nichols yard was 42 feet in length. Since then boats up to 152 feet long and barges up to 265 feet long have been built on the site and launched into Holmes Harbor. These have been fishing, excursion and work vessels. Launches currently average about four per year.

III

Virtually all the area around Nichols, is residential or agricultural. The residences are both seasonal and year-round. The greatest concentration of residences is on the shores of Holmes Harbor. The relatively sheltered and shallow nature of the Harbor makes it a favorite for summer boating and swimming.

IV

The proposed development consists of expanding the boat works. Within the present 5.6 acre site, a metal fabrication building (110' by 200') is proposed for addition to the two smaller fabrication buildings (each 50' by 100') there now. A third tower crane is proposed for addition to the two there now. A septic tank and drainfield, stormwater drains and relocation of office and other structures are also proposed. In addition, Nichols proposed to use a small dock and mooring buoy in Holmes Harbor for minor outfitting and repair.

V

In 1980, Nichols applied to Island County for a shoreline substantial development and conditional use permit for the proposed

1 expansion. At the request of Island County, an Environmental Impact
2 Statement (EIS) was prepared. On January 3, 1983, the Island County
3 Board of County Commissioners granted the requested shoreline permit,
4 subject to 23 enumerated conditions. Under authority of the Shoreline
5 Management Act (SMA) (RCW 90.58.140(12)) the State Department of
6 Ecology (DOE) reviewed and approved the conditional use portion of the
7 shoreline permit which deals with use of the pier and buoy. Its
8 approval was subject to two conditions:

9 1. The use of the dock shall be limited to
10 activities which do not include boat construction or
repair.

11 2. The use of the mooring buoy shall be limited to
12 temporary moorage for vessels associated with Nichols
13 Brothers Boat Builders. No boat construction or
repair activities shall occur at the buoy.

14 The Board of County Commissioners subsequently adopted these two
15 additional conditions on February 7, 1983.

16 Appellant, Holmes Harbor Homeowners Association, requested review
17 of the shoreline permit on February 9, 1983. Respondent, Nichols,
18 requested review of the above two conditions prescribed by DOE on
19 March 7, 1983, but withdrew that request on the record at hearing.

20 VI

21 The EIS for the proposal reasonably discloses the potential
22 impacts relating to noise, aesthetics, air pollution, sewage disposal,
23 surface water pollution, fire risk, traffic flow, and glare. The EIS
24 discussed reasonable alternatives to the proposal. Nichols owns a
25 facility seven miles away at Langley on Whidbey Island. The facility
26 is suited to outfitting vessels which are afloat. The Langley

facility is not a reasonable alternative location for the boat building yard because a steep bank limits buildable area at water level.

VII

The Nichols site is designated "urban" by the Island County Shoreline Master Program (ICSMP). All other shoreline on Holmes Harbor is designated "shoreline residential", "rural", "conservancy" or "natural." The surface of Holmes Harbor (and beneath) is designated "aquatic." ICSMP, Appendix F and Sec. 16.21.035(F), p. 5.

VIII

The proposed development is a water dependent industrial facility. This is permitted as a primary use in the urban environment and a conditional use in the aquatic environment. ICSMP Sec. 16.21.035(D)(1), p. 4 and (F)(3), p. 5.

IX

The following criteria also apply to the proposed development:

4. Industrial and port facilities shall be located, designed, constructed and operated so as to minimize unnecessary interference with the rights of adjacent property owners as well as adjacent shoreline or water uses. ICSMP, Sec. 16.21.110(B)(4), p. 16.

3. Docks and piers shall be located, designed and operated so as not to unnecessarily interfere with rights of adjacent property owners, nor interfere with adjacent water uses. ICSMP, Sec. 16.21.070(3), p. 10.

X

Noise. The most prominent noises from the Nichols boat building yard are: 1) the hammering of metal on metal during assembly and

1 2) the cutting of aluminum with a skill-saw, which is done because
2 aluminum can't be cut properly with a cutting torch. The hammering
3 and cutting noises are objectionable because of their frequency and
4 beat as well as volume. These noises could be reduced up to 85% by
5 enclosing the work within enclosed fabrication buildings. Nichols
6 stipulates that it would enclose its existing fabrication buildings as
7 well as proposing a new, larger, enclosed fabrication building in
8 which more of the boat building and assembly operation could occur.

9 The Nichols yard now sounds a horn to mark the routine, daily
10 occurrence of start-up, mid-morning break, noon hour, mid-afternoon
11 break and quitting time. This is audible to surrounding residents and
12 objectionable because of its frequency.

13 Boat construction or repair at the Nichols dock or buoy would
14 produce objectionable noise.

15 The ICSMP provides:

16 Objectionable noise which is due to volume, frequency
17 or beat shall be muffled or otherwise controlled.
18 Sec. 16.21.110(b)(7), p. 16.

19 XI

20 Light and Glare. Within the Nichols yard, work lights cause glare
21 to be visible from nearby residences. This glare could be eliminated
22 by shielding. After hours there is no necessity for work lights.
23 Only security lights are necessary then, except during night launches
24 when flood lights are required.

25 Welding torches in the Nichols yard also cause glare visible from
26 nearby residences. This could be mitigated by increasing, and using,

- the indoor work area as Nichols proposes.

2 Boat construction or repair on the open water at the Nichols dock
3 or buoy would produce glare visible from residences along the shores
4 of Holmes Harbor.

5 The ICSMP provides:

6 The industrial facilities shall assure that no direct
7 or reflected glare is visible from adjacent
8 properties, streets or water areas.
9 Sec. 16.21.110(B)(8), p. 16.

XII

10 Fire Risk. The Nichols yard is host to significant amounts of
11 highly flammable items used in the business: 1) propane (1000
12 gallons), 2) gasoline and diesel fuel (1000 gallons), 3) paint (2000
13 gallons) and 4) oxygen (1000 gallons). There is no on-site water
14 storage or hydrant for fire fighting. There are hand held fire
15 extinguishers on the site.

16 The most conservative estimate of fire flow necessary for the
17 protection of the expanded boat yard, as proposed, is 4500 gallons per
18 minute for 60 minutes. The current capability of the Fire District
19 serving the site is limited to 6000 gallons brought in four tanker
20 trucks--enough for 1-1/3 minutes of fire fighting. In addition,
21 pumping from Holmes Harbor might yield 1000 gallons per minute, tide
22 permitting.

23 The application for the subject shoreline permit does not disclose
24 what means or equipment would be employed to achieve adequate fire
25 flow and fire protection.

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1 The ICSMP provides:

2 . . . Any activity involving the use or storage
3 of flammable or explosive materials shall be
4 protected by adequate fire-fighting and
5 fire-prevention equipment and by such safety devices
6 as are normally used in the handling of any such
7 material. . . . Sec. 16.21.110(B)(5), p. 16.

8 XIII

9 Sewage. The application (site plan) for the shoreline permit in
10 question shows a septic tank drainfield located to the east of the
11 site. There are no water wells within a 100 foot radius of the
12 drainfield nor is any water well likely to be adversely affected by
13 the drainfield. Appellant did not prove that a drainfield at this
14 location would adversely affect ground or surface water. A drainfield
15 could also be located, without apparent adverse effect, adjacent to
16 the south boundary of the Nichols site.

17 XIV

18 Surface Water. The expanded Nichols boat yard would not discharge
19 any process materials to the surface water. Storm water runoff from
20 the site was tested on one occasion and found to contain heavy metals
21 in very small quantity. These may have originated from the machine
22 shop formerly located on the site. Nichols proposes storm drains
23 leading to oil separators to protect surface waters from oil which
24 rain might otherwise wash from the boat yard.

25 The ICSMP provides:

26 Industrial developments shall comply with all
27 federal, state, regional and local requirements
regarding air and water quality.
Sec. 16.21.110(B)(3), p. 15.

XV

2 Air Emissions. The two principal emissions into the air from the
3 Nichols yard are from spray painting and abrasive blasting in
4 preparation for painting. The risk of paint spray or abrasive falling
5 onto the property of others can be curtailed by building, and using,
6 more indoor work space as proposed. Where indoor workspace is
7 unavailable, painting and blasting can be conducted so that paint and
8 abrasive are closely confined to the worksite. The ICSMP provides for
9 adherence to federal, state, regional and local requirements regarding
10 air quality. Sec. 16.21.110(B)(3), p. 15, Finding of Fact XIV, supra.

XVI

12 Domestic Water. Domestic water is now brought in bottles to the
13 Nichols yard. There is no public water system serving the site.
14 Wells located close to the shore, as would be the case on the Nichols
15 site, bear the risk of salt water intrusion. The application (site
16 plan) for this shoreline permit proposes "6 inch water supply from WB
17 Waterworks", which is a groundwater source originating at a more
18 inland well. Appellant has not proven, on this record, that increased
19 use of this or other inland, island wells by this project poses an
20 immediate danger of salt water intrusion. There is a possibility of
21 long range, salt water intrusion into wells of Whidbey Island
22 depending on whether usage lowers well levels too severely.

XVII

24 Traffic. During the launching of vessels from the Nichols yard,
25 traffic on Bayview Avenue is blocked by movement of the vessel from

1 the yard, on one side of Bayview, to the water, on the other. An
2 alternate detour route exists. Launches occur about four times per
3 year.

4 XVIII

5 Aesthetics. The present Nichols yard is unscreened by vegetation
6 or fencing around most of its perimeter. Materials are stored in the
7 yard here and there. The proposal includes fencing, vegetative
8 screening and increased indoor storage for materials. All materials
9 could be stored within the fenced yard. The proposed boat yard
10 expansion, with such screening and fencing, would enhance its
11 aesthetic appearance.

12 XIX

13 Any Conclusion of Law which should be deemed a Finding of Fact is
14 hereby adopted as such.

15 From these Findings the Board comes to the following '

16 CONCLUSIONS OF LAW

17 I

18 Appellant contends that Nichols' EIS for the proposal is
19 inadequate. The adequacy of an EIS is a question of law. Leshci
20 Improvement Council v. State Highway Commission, 84 Wn2d 271, 525
21 P. 2d 774 (1974). However the adequacy of an EIS is judged by the
22 "rule of reason." Cheney v. Montlake Terrace, 87 Wn2d 338, 552 P. 2d
23 184 (1976). An EIS must disclose, discuss and substantiate the
24 environmental effects of the proposed action. Leschi, supra. Island
25 County's action on Nichol's application for this shoreline permit

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constitutes a decision that Nichol's EIS is adequate. Such a decision
by the governmental agency involved is "accorded substantial weight."
RCW 43.21C.090. Under all of the above standards, we conclude that
the Nichol's EIS is adequate.

II

We review the proposed development for consistency with the
applicable (Island County) shoreline master program and the Shoreline
Management Act (SMA). RCW 90.58.140.

III

Noise from the proposed development would be muffled or controlled
within the meaning of ICSMP 16.21.110(B)(7), p. 16 (see Finding of
Fact X, above) if state noise standards for peak noise intensity were
observed, WAC 173-60-040, all fabrication buildings were enclosed, the
use of loud speakers, signal systems and auxiliary generators were
minimized, the "noon whistle" was eliminated, and the first and last
hours of operation were free of chipping, hammering or other loud
noises. These controls should be implemented, along with a written
monitoring program to assure compliance.

IV

Glare from the proposed development would be stopped within the
meaning of ICSMP Sec. 16.21.110(b)(8), p. 16 (see Finding of Fact XI,
above) if, in addition to conditions imposed by Island County, only
low security lights were allowed after the hours of operation. The
above cited ISCMP section only prohibits glare and does not prohibit
illumination which is glare-free.

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The ICSMP, Sec. 16.21.110(B)(5), p. 16 (see Finding of Fact XII, above) requires adequate fire fighting and prevention equipment where flammable materials are used and stored. We construe this to mean that the proposed expansion of the Nichol's yard must include compliance with normal fire safety requirements, including fire flow, for the entire yard, existing and proposed. These requirements are set forth in the fire code and Island County water ordinance including the Insurance Service Guide. The fire flow adequate for existing and proposed development should be operative prior to commencement of Phase II (major construction involving fire hazard--see condition no. 22 in Conclusion of Law XI, below). Unless this is so, the fire flow cannot be effective during construction of the proposed development.

The application for this shoreline permit does not specify a source for fire flow. Because of this we cannot know whether additional shoreline substantial development might be necessary to bring this about.¹ In the future, Island County should consider making a fire code review of a proposed shoreline substantial development before acting on the shoreline permit. This would avoid the possibility that a new or revised shoreline permit would be required for a device to provide fire flow. See Monsanto v. King County, et al., SHB No. 80-48 (1981).

1. During the hearing Nichols' counsel alluded to permanent pumps and transmission pipe in Holmes Harbor as one option for providing fire flow.

VI

So far as the placement of the septic tank drainfield, the concerns of the SMA for prevention of damage to the natural environment, RCW 90.58.020, appear to be met if state and local health requirements are met. This appears possible at the proposed location east of the site² or at the south boundary site. An adequate septic system should be operative prior to Phase II.

VII

The requirement of the ICSMP Sec. 16.21.110(B)(3), p. 15 (see Finding of Fact XIV, above) that water quality requirements be met is satisfied with the conditions imposed by Island County provided that storm drains with catch basins are operative prior to Phase II.

VIII

The requirement of the ICSMP Sec. 16.21.110(B)(3), p. 15 (see Finding of Fact XIV, above) that air quality requirements be met is satisfied with the conditions imposed by Island County provided that outdoor painting or abrasive blasting occurs only where adequate precautions are taken to prevent the release of particulate matter to the ambient air. See Northwest Air Pollution Control Authority Regulations, Sec. 550, of which we take official notice.

2. Even so, the responsibility for any pollution which the east-site drainfield may cause to the adjacent wetland or groundwater remains with Nichols.

IX

So far as domestic water supply, the concern of the SMA is once again for prevention of damage to the natural environment, RCW 90.58.020, in this instance protection of groundwater from saltwater intrusion. The conditions imposed by Island County were not shown to be inadequate for that purpose on this record.

X

The proposed development, as conditioned by Island County, was not shown to be at odds with either the SMA or ICSNP so far as the brief interruption of traffic caused by launching or the aesthetic effect of the proposed expansion.

XI

A shoreline substantial development and conditional use permit should be issued to Nichols with the following 23 conditions. These conditions are those granted by Island County but with the revisions necessary to conform the proposed development to the ICSMP and the SMA.³

The 23 conditions are as follows:

*1. Binding Site Plan

a. The applicant shall adhere to the approved site plan unless it is revised in accord with all applicable laws and regulations. The approved site plan is Exhibit A-6 in SHB No. 83-6.

2. Other Permits

a. The applicant shall apply for and obtain all necessary

3. Revised conditions are marked with an asterisk "**".

1 federal, state, and local permits and approvals prior to implementing
2 respective aspects of the proposal.

3 3. Boundary Survey/Dedication of Rights-of-Way

4 a. Within six months the applicant shall have prepared and
5 recorded a boundary survey of the entire site, including the marsh and
6 tidelands.

7 b. Within three months of the completion of the survey, the
8 applicant shall deed to Island County the adequate and necessary
9 right-of-way widths for the as-built Cameron and Bayview Roads
10 adjoining the site.

11 *4. Restricted Activities

12 a. The use of the dock shall be limited to activities which do
13 not include boat construction or repair.

14 b. The use of the mooring buoy shall be limited to temporary
15 moorage for vessels associated with Nichols Brothers Boat Builders.
16 No boat construction or repair activities shall occur at the buoy.

17 c. The use of the dock and mooring buoy shall be restricted to
18 activities which do not generate noise or glare or impact water
19 quality.

20 *5. Hours of Operation

21 a. Regular hours: The applicant shall adhere to the following
22 regular hours of operation: 7:00 a.m. to 8:00 p.m., Monday through
23 Saturday, except no chipping, hammering, or other loud noise-producing
24 activities shall be permitted from 7:00 a.m. to 8:00 a.m. and from
25 7:00 p.m. to 8:00 p.m.

1 b. Other: The applicant shall be allowed to launch vessels
2 outside of regular working hours when necessary to take advantage of
3 the tide, provided that the Island County Planning Department is
4 provided 24 hours' notice of intent to launch. No other activities,
5 such as outfitting, are allowed. "Launch" means only the movement of
6 a vessel into the water, and excludes work on a vessel while
7 stationary, either ashore or afloat.

8 *6. Noise Pollution Control

9 a. The applicant shall adhere to State noise standards
10 prescribed in WAC 173-60-040.

11 b. All fabrication buildings, existing and proposed, shall be
12 enclosed structures.

13 c. The applicant shall minimize any use of loud speakers, signal
14 systems and auxiliary generators particularly during night-time
15 launches and on Saturdays. The applicant shall cease use of the
16 "noon-whistle" or equivalent sounds to mark the routine daily
17 occurrence of opening, closing and work breaks.

18 d. The County shall regularly monitor noise emanating from the
19 site according to a written monitoring program on public file. Such
20 monitoring shall determine compliance with the above noise conditions
21 and with noise limitations applicable to the first and last hour of
22 operation (see Condition 5, above).

23 *7. Air Pollution Control

24 a. The applicant shall adhere to all Northwest Air Pollution
25 Authority standards and requirements, including the use of copper or

nickel slag for abrasive blasting.

b. All painting and abrasive blasting shall occur indoors, size permitting. Otherwise it shall occur only where adequate precautions are taken to prevent the release of particulate matter to the ambient air.

*8. Surface Water Pollution Control

a. Within one year or prior to commencement of Phase II, whichever is less, all surface water runoff from the commercially-zoned property shall be collected and discharged into Holmes Harbor through storm drains provided with catch basins and oil-water separators approved by the Island County Engineering Department, with monthly maintenance provided thereafter.

b. During the first year of storm drain discharge, the applicant in cooperation with the Island County Health Department shall take and perform monthly chemical analyses of samples of the discharge waters from this system to determine if contaminants are being discharged into Holmes Harbor.

c. As a result of the tests performed under 8.b., the County may terminate the tests or require that they be performed quarterly until it is determined that no problem exists or until retention and/or treatment facilities are installed.

d. The applicant shall not pollute the waters of Holmes Harbor by bilge pumping or the use of any submersible barge.

*9. Groundwater Pollution Control

a. Within one year the applicant shall take all precautions to

1 ensure that all painting, blasting, welding, and use or storage of
2 hazardous materials (as defined in the Uniform Building Code) will
3 occur on impermeable surfaces with containment to prevent the
4 transport of pollutants off-site.

5 b. Prior to commencement of Phase II, the applicant shall
6 abandon any wells requiring abandonment in accordance with Washington
7 State Department of Ecology regulations.

8 *10. Sewage Disposal

9 a. Within six months the applicant shall submit a sewage
10 disposal plan for approval by the Island County Health Department.

11 b. Prior to commencement of Phase II, the applicant shall
12 install a sewage disposal system meeting the requirements of all
13 appropriate agencies.

14 c. Upon installation of the new sewage disposal system, any
15 inadequate system shall be disconnected and abandoned in accordance
16 with Island County Health Department requirements.

17 11. Solid Waste Disposal

18 a. Within six months the applicant shall submit a brief solid
19 waste disposal plan to the Island County Health Department for
20 approval indicating the types of volume of waste generated and the
21 existing and proposed method of disposal.

22 b. The applicant shall not dispose of any hazardous waste,
23 except in an approved hazardous waste disposal facility.

24 12. Domestic Water Supply

25 a. The applicant shall continue to use bottled water for human

consumption until hook-up is provided to an approved water system meeting the standards of Island County and the Washington State Department of Social and Health Services.

b. Within six months the applicant shall develop a plan for such hook-up, and shall provide such hook-up prior to commencement of Phase II after obtaining approval from all necessary agencies.

*13. Fire Protection

a. The applicant shall comply with all requirements of the Island County fire code and water ordinance, including the Insurance Service Guide.

b. The applicant shall adhere to the requirements in paragraph 13a., above, in the design, location, and construction of all new and existing structures, and in the handling, use, and storage of hazardous materials, as defined in the Fire Code. Prior to commencement of Phase II, the applicant shall plan, obtain all necessary government approvals for, and make operative, an adequate fire flow for both existing and proposed structures.

c. In conformance with the Northwest Air Pollution Authority regulations, no open burning shall be allowed.

14. Flood Protection

a. All developments proposed to occur within the 100-year flood plain shall be constructed in accordance with the Island County Flood Hazard Ordinance.

b. The applicant shall maintain the flood gate on the northeast

1 corner of the boat yard to minimize flooding and potential water
2 pollution.

3 *15. Light and Glare

4 a. All fixed lights including any on the dock shall be shielded
5 to prevent light from shining directly on surrounding property.

6 b. All welding shall be conducted in such a manner as to
7 minimize off-site glare.

8 c. The applicant shall minimize the use of flood lights during
9 night-time launches.

10 d. Excepting launches, no lights shall be permitted after the
11 hours of operation except as necessary for security and such security
12 lights shall be shielded, and shall not exceed twelve (12) feet in
13 height.

14 16. Fencing

15 a. Within six months, the applicant shall complete construction
16 of a permanent eight-foot high natural wood fence around the entire
17 boat yard (excluding the parking areas) with one movable fence section
18 along Bayview Avenue and two gates adjacent to the existing office
19 building as shown on the proposed site plan. The portion of the fence
20 immediately adjoining the proposed fabrication may be removed when the
21 new building is constructed.

22 b. Within six months of the completion of the survey, the
23 applicant shall relocate any portion of the fence on Bayview Avenue
24 lying within the existing dedicated right-of-way required by
25 1.3.25.3.b. herein.

17. Parking

a. Prior to commencement of Phase II, all parking areas adjacent to the boat yard shall be laid out and paved with gravel as shown on the proposed site plan with the spaces clearly delineated, except as modified under "Access" below.

b. No parking under this permit shall be allowed on the County rights-of-way.

c. All large trucks and heavy equipment shall be stored within the fenced area when not in use.

18. Access

a. Access to the boat yard and parking areas shall be where shown in the proposed site plan and subject to specific approval by the Island County Engineer.

19. Landscaping/Aesthetics

a. Within six months the applicant shall submit a landscape plan for the proposed buffer and parking areas which will effectively screen the boat yard from the south and west within ten years and beautify the parking areas within three years. The plan shall specify size, number, location, and spacing of species. The applicant shall not rely solely on County right-of-way for landscaping along Cameron Road and Bayview Avenue.

b. Within six months of plan approval the applicant shall install the landscaping and maintain it thereafter.

c. All material storage shall occur within the fenced areas as described above.

1 20. Signs

2 a. The applicant shall be allowed two unlighted signs of modest
3 size to be located on, rather than above, any building or fence.

4 b. The applicant shall design a standardized sign for approval
5 by the Island County Engineering Department, and shall post such a
6 sign at the intersections of Woodard and Bayview Avenues and Cameron
7 Road and Bayview Avenue during any launch to advise the public of road
8 closure.

9 *21. Tideland Construction

10 a. The applicant shall remove any portion of the boat launch
11 ramp lying on tidelands owned by other persons within six months of
12 the completion and filing of the survey required by condition 3,
13 above, unless rights to utilize those tidelands are obtained.

14 b. The applicant shall submit a detailed plan and receive
15 approval by the Island County Planning Department before permanently
16 constructing the boat launch ramp, and no such construction shall
17 occur between February 15th and June 15th of any year.

18 *22. Construction Timing/Setbacks

19 a. The applicant shall adhere to the proposed phases and the
20 timing requirements specified above. The phases are:

21 Phase I:

- 22 1. Plant buffer strips.
23 2. Install employee parking areas.
24 3. Install five parking spaces at dock.
25 4. Install extension of boat launch ramp.

1 5. Install security light at dock.

2 Phase II:

3 1. Convert former Becker house to office

4 2. Relocate structures and uses as indicated in Exhibit A-6
5 in SHB No. 83-6.

6 3. Install tower crane.

7 4. Install additional yard lights.

8 5. Construct new 110' x 200' metal fabrication building.

9 6. Expand existing fabrication building.

10 7. Expand existing office area.

11 See pp. 29-30 of Draft EIS, Exhibit A-4 in SHB No. 83-6.

12 b. Any buildings to be removed shall be so removed within three
13 months after replacement buildings are constructed.

14 c. All buildings and fencing to be located on the south and east
15 boundaries of the boat yard shall be set back 20 feet from the
16 boundary of the Commercial Zone unless a variance is first obtained.

17 d. Whenever these conditions require action within a given time
18 period, that period begins when the applicant receives a re-issued
19 shoreline permit pursuant to the Order of the Shorelines Hearings
20 Board in SHB No. 83-6.

21 23. Bonding/Enforcement

22 a. Within two months the applicant shall post a surety of
23 performance bond or other surety approved by Island County in the
24 amount equal to the cost of the site mitigation improvements
25

1 specified. Prior to the establishment of a bond amount, the applicant
2 shall submit a list of improvements and estimated costs.

3 b. If the applicant fails to comply with the above-listed terms
4 and conditions the Island County Planning Department shall seek
5 compliance by foreclosing on the bond or by initiating legal action,
6 whichever is appropriate.

7 XII

8 Both the terms of the shoreline permit and enforcement of it are
9 necessary to achieve the ends of the ICSMP and the SMA. The SMA vests
10 Island County and the Attorney General with authority to enforce this
11 shoreline permit. RCW 90.58.210 and .220.

12 XIII

13 We have carefully examined the other contentions of appellant and
14 find them to be without merit.

15 XIV

16 Any Finding of Fact which should be deemed a Conclusion of Law is
17 hereby adopted as such.

18 From these Conclusions the Board enters this
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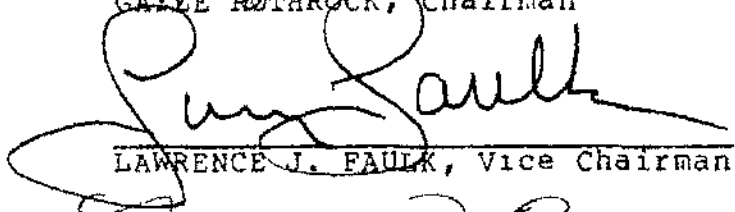
ORDER

The shoreline permit granted by Island County to Nichols Brothers Boat Builders, Inc., is reversed to the extent necessary to conform it with the 23 conditions set out in Conclusion of Law XI. The permit is affirmed in all other respects. This matter is remanded to Island County for reissuance of the shoreline permit consistent with this Order.

DATED this 24th day of February, 1984.

SHORELINES HEARINGS BOARD



GAYLE ROTHROCK, Chairman


LAWRENCE J. FAULK, Vice Chairman


NANCY R. BURNETT, Member


RICHARD A. O'NEAL, Member


RODNEY M. KERSLAKE, Member


WILLIAM A. HARRISON
Administrative Law Judge

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